IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL

First Appeal No. 761 of 2001
(Old No. 643 of 1993)

State of U.P. through
Chief Engineer (Garhwal)
U.P. Public Works Department
Pauri Garhwal ... Appellant

Vs

1. Inder Chandra Ramola
2. Mal Chandra Ramola
3. vijai Chand Ramola
4. Karan Chand Ramola
   All S/o Nag Chand Ramola
   R/o Village Bhalli
   Patti Gamari, Tehsil Dunda
   District UttarKashi
5. District Judge, Uttarkashi ... Respondents

Sri J.P. Joshi, learned Standing Counsel for the State
Sri H.S. Rawal holding brief of Sri V.B.S. Negi, learned counsel for the respondents

Hon'ble B.C. Kandpal, J.

The first appeal has been preferred by the appellant – State against the judgment and decree dated 03.08.1993 passed by District Judge, Uttarkashi in O.S. No. 18 of 1988 whereby the suit of recovery of Rs. 89,000/- for mandatory injunction is decreed with costs against the defendant/appellant.

2. Brief facts of the case are that plaintiffs/respondents asserted that P.W.D., Uttarkashi planned to lay down a road popularly known as Sunargaon Jogat Motor Road. This road had to pass through a portion of plots No. 143, 144, 666, 668 and 670 belonging to the plaintiffs/respondents. The plaintiffs/respondents planted grove of fruit bearing trees namely, mango, guava, chestnut etc. There was certainty that the said road shall be used by public at large and the proposal of laying out road was detrimental because there was every possibility that the persons who would pass through that road could commit theft

and crop would be damaged by cattle. Executive Engineer, P.W.D. gave assurance in writing that the portion of the land which would be acquired for the purpose of this alignment of road which would not be taken free of cost and adequate compensation would be paid. On the basis of the assurance the plaintiffs/respondents gave their consent in writing on 22.12.1983. The then Executive Engineer vide a specific undertaking dated 18.05.1985 gave clear assurance to the plaintiffs that soon after completion of the work they would proceed to eract protection wall and complete the work of barbed wires fencing also. Despite this written assurance no protection wall was eracted and fencing work was not done. The plaintiffs could not grow vegetable crop and each year they suffered loss to the extent of Rs. 10,000/-. The plaintiffs/respondents approached the defendant/appellant to abide by the terms and conditions of the agreement but they continued to prolong the matter on one pretext or the other. Even stones and debris of road was stored over plots No. 144, 145, 146, 147, 637 and 639 and even after completion of the work the same was not removed and due to which the plaintiffs could not raise crop. The plaintiffs/respondent could not irrigate their field because gool was demolished. The officer and officials of P.W.D. did not undo the wrong, hence the suit for mandatory injunction and recovery of damages.

3. The defendant/appellant resisted the suit filed by the plaintiffs. The defendant pleaded that their existed no plot adjoining Khasara Plots No. 66, 668 and 670 which were acquired for laying down the road. The defendant has further alleged that the plots No. 669 and 672 adjoin to plot No. 670 and the same belongs to State of U.P. Plot No. 665 which is adjoining to plot No. 670 also belonged to State of U.P. Under these circumstances there was no occasion for any damages to

the fruits and vegetables which the plaintiffs were growing over their own plots. It has also pleaded that the road has been constructed over Khasaras Plot No. 144 and plot No. 143 is situated at a higher level to the extent of 7 ft. from Plot No. 144. Plots No. 145 and 146 are situated at a lower level to the extent of 6 ft. from plot No. 144. In view of this fact there was no necessity for eracting protection wall at both the sides of plot No. 144. The defendant/appellant has also alleged that the suit was filed with false and incorrect allegations, hence it was liable to be dismissed.

4. On the basis of the pleadings of the parties, following issued were framed by the court below:-

1. Whether the defendant was under legal obligation to construct wall on both sides of the road in order to protect the contiguous garden on the plaintiffs? If so, its effect?
2. Whether the defendant is liable for any loss allegedly sustained by the plaintiffs by passing of the road?
3. Whether the plaintiffs had suffered loss of crops to the tune of Rs. 89,000/- and whether the defendant is liable to pay the same?
4. Whether the damages caused to the plaintiffs plots No. 634, 636, 637 and 639 were due to the act of the defendant or due to flowing of 'Rauli'? In either case whether the defendant is responsible to compensate the damages caused to the plaintiffs?
5. Whether the road was constructed by the defendant on any Gool? If so whether the plaintiffs were deprived to irrigate their plots

and thereby suffered loss of crops at the rate of Rs. 5,000/- per crop?

6. Whether any debris was collected over plaintiffs' Plots No. 637 and 639 during the construction of the road by the defendant, if so, whether the defendant is liable to remove the same and even to pay damages to the plaintiffs as claimed by them?

7. To what relief, if any, are the plaintiffs entitled?

5. The court below after having considered the arguments advanced by learned counsel for the appellant and after considering the entire material available on record come to the conclusion that the plaintiffs' suit for recovery of Rs. 89,000/- and for mandatory injunction is decreed with costs against the defendants. The plaintiffs shall also be entitled to recover pendent elite and future interest @ 12@ per annum vide judgment and decree dated 03.08.1993.

6. Feeling aggrieved by the aforesaid judgment and decree, the State preferred this first appeal.

7. Heard Sri J.P. Joshi, learned Standing Counsel for the State, Sri H.S. Rawal holding brief of Sri V.B.S. Negi, learned counsel for the respondents and perused the record.

8. The record shows that the plaintiffs/respondents in support of their case examined Inder Chand Ramola as P.W.1 who deposed that the road was laid down by P.W.D. and the land belonging to the plaintiffs/respondents was acquired and the Executive Engineer, P.W.D. gave assurance that protection wall would be eracted and there would be fencing and wiring but nothing was done. This witness has given a detail

pertaining to the loss which accrued to him. He has further deposed that he used to earn a sum of Rs. 10,000/- per annum from the grove and Rs. 4,000/- per annum from cultivating vegetables but on account of the damage caused to him there is recurring loss of the aforesaid income. This witness has also stated that on account of calculation of debris loss to the extent of Rs. 4,000/- per annum was also being caused. This witness was cross examined in details.

9. Another witness Amal Singh was also examined as P.W.2 and according to his statement, he undertook to grow vegetables over the plots belonging to the plaintiffs/respondents and took *Theka* in the year 1980. He had to pay an amount of Rs. 10,000/- per annum for the *Theka* and the entire amount was to be paid in two installments. A document Ext. 24 is the dead which was executed for the aforesaid *Theka.* This witness has also been cross examined in detail.

10. Another witness Krishan Chand Ramola was also examined as P.W.3 and he has deposed that he took *Theka* for growing vegetables and undertook to pay Rs. 4,000/- to the plaintiffs/respondents. Mall Chand is the another witness who deposed in his statement that he took *Theka* for grove and the vegetables.

11. Ranjeet Singh (P.W.5) is the Assistant District Agricultural Officer who has deposed that the vegetables were grown over the plaintiffs/respondents fields. Another witness R.P. Srivastava (P.W.6) was also examined by the plaintiffs/respondents who proved Ext. 26 which is the paper issued to the plaintiffs/respondents.

12. The appellant who was the defendant before the court below examined D.W.1 – Lakhi Ram, Junior Engineer and D.W.2 – Gokul Singh.

13. There is no controversy to this fact that the plaintiffs/respondents is recorded tenure holders of Khasara plot Nos. 143, 144, 666, 668 and 670. There is also no controversy that the portion of the land was acquired for laying down the road. The documents filed by the plaintiffs/respondents clearly show that the name of Inder Chand Ramola, Mal Chand Ramola and Krishan Chand Ramola is recorded in the revenue record. The record reveals that the notice was issued by the plaintiffs/respondents to the appellant specifying there grievances and the loss suffered by them on account of laying down of the road and in that notice Ext. 18 there is a narration of the assurance by the appellant and the consent given by the plaintiffs/respondents.

14. Apart of the aforesaid documents, there is one more paper Ext. 8 which is a letter issued by the Executive Engineer, P.W.D. to Mal Chand Ramola and by virtue of this letter it was communicated that higher authorities would be consulted regarding road alignment and due care of the fruit bearing trees and the adequate compensation will be paid. Ext. 17 is the consent letter and the perusal of this letter shows that the consent was subject to the eraction of protection wall and providing barbed wires fencing.

15. Further Ext. 9 is the letter issued by the Executive Engineer, P.W.D. intimating to the plaintiffs/respondents informing therein that as per consent work was being undertaken and on the receipt of new rates compensation for acquiring the plots would be paid.

16. A Commission was issued to Advocate Commissioner to file the report which is paper No. 32-Ka and this report was confirmed by the court below subject to the evidence to be led by the party. The Commissioner visited the spot and filed two copies, which form part of the record. According to this report plot No. 666 was situated at a lower level towards West of Khasara Plot No. 668. Plot No. 670 was situated at a higher level near road at the Northern corner. Near Plot No. 670, the road which was laid down took a turn. Khasara Plots No. 637 and 639 were situated at lower level. There existed protection wall. At some places it was 7 ft. high at other places it was 4.5 ft. high. Its length was 46 ft. It was full of debris. There existed three apricot trees, one malta tree and one orange tree alongwith three Bhimal trees. The same were about 30 years old. At the Eastern corner of this plot there exist 6 inches high wall which was unplastered and it could be scaled without any difficulty. Its length was 65 ft. Over Khasara Plot No. 668 there existed two Bhimal trees about 28 years old. At Southern portion of this plot there existed road. At Southern corner there was a sharp turn and plots No. 637 and 639 were situated at a lower level. There existed Bhimal trees and both these plots namely plots No. 637 and 639 were full of debris which was result of laying out of road. At the Northern portion of plots No. 670, 668 and 66 there was a Rauli which was flowing towards West. In the second part of the inspection report the Commissioner surveyed the land situated around plot No. 144 which was utilized for the construction of the road. Khasara plot No. 147 was situated towards East and Khasara plot No. 145 towards West. The plaintiffs who were present at the time of survey disclosed that only one nail land of Khasara plot No. 144 was acquired. There was no protecti9on wall over Khasara Plot No.

143. There existed old support wall which was 3 ft. high it was in a dilapidated condition. Northern corner of plot no. 143 used for laying out of road which was to the extend of 25 ft. in length and one mt. In breadth, there existed no support wall. Even over the remaining portion of Khasara plot No. 143 there existed a grove of Mango, guava, chestnut and orange trees. Towards the East of Khasara plot No. 143 there existed a reservoir. It appears that it was not meant for cattle but was used for irrigation purposes. There was no protection wall. Over Khasara Plot No. 145 there was old support wall which was broken. It was 5.5 ft. high and it was quite easy to scale this wall. There were passages in between and cattle could pass through these passages. The plaintiffs grove was situated over plots No. 145, 146 and 147. There existed fruit bearing trees. New trees were also planted. Some were 1 to 5 years old and the same were damaged by cattle. Towards West of these plots Khasara Plots No.. 122, 123, 124, 146, 147 and 149 were situated. All these plots were full of debris. Over Northern portion of plot No. 146 debris had been collected and Norethern portion of plot No. 145 was also in the same condition. A portion of Khasara plot No. 148 was also in the same condition. There existed a canal in the middle of khasara plot No. 144 it was in a damaged condition to the extent of 6 mt. In length and 1/2 mt. in width. Over plot No. 144, 145, 146 and 147 there existed gool which was 45 mt. in length and 1/2 mt. in breadth. It was in a damaged condition. Plot No. 123, 124, 146, 147, 148 and 149 were irrigated through this gool. The space between the trees over these plots was not being used for growing vegetables. The plaintiffs who were present at the time of inspection indicated and it was on account of lack of security that they were not in a position to grow crop. In the middle of the grove there ixisted road which

was being used by inhabitants of the villages as a passage and grove was damaged by cattle. There existed definite symptoms evidencing such damage. The Commissioner expressed that eraction of protection wall was necessary for ensuring safety and also stated about the necessity of barbed wires fencing.

17. The plaintiffs/respondents produced evidence in support of the Commissioner's report and the defendant/appellant could not produce any evidence to the contrary to show that no such damage was caused and there was no necessity for the protection of wall. D.W.1 – Lakhi Ram, Junior Engineer deposed in his statement that the road passed through middle of the plots belonging to the plaintiffs/respondents and there existed no debris in the grove. He has also stated that the plaintiffs/respondents were paid compensation. This witness has admitted that inspection report was prepared but he has no knowledge whether the plaintiffs/respondents has suffered any loss or not. D.W.1 has also admitted that paper No. 64 is a genuine paper and those inspection report bears the signature of the Assistant Engineer. This witness could not muster courage to deny the signatures of Assistant Engineer. Regarding paper No. 56 Ext. 9, there is no doubt with regard to the authenticity and the genuineness of this document. It is, therefore, quite clear that the plaintiffs/respondents were assured in unequivocal words that work was being undertaken as per their consent.

18. There is nothing on the evidence which may suggest that there was no agreement with regard to the construction of protection wall and providing barbed wires fencing. The defendant/appellant could not challenge the Commissioner's report, therefore, the court below has rightly confirmed the report and believed the same. The Commissioner's report

further find support from the testimony of the plaintiffs/respondents witnesses and even on the basis of the statement of D.W.1 – Lakhi Ram, Junior Engineer the debris existed over the plots which were situated at the lower level of the road. The witnesses produced by the defendant/appellant nowhere have stated that *Malva* was stored on the plots belonging to the State.

19. The court below has rightly come to the conclusion that plaintiffs/respondents are not in a position to grow any vegetable over their plots under controversy. It is also clear from the evidence on record that the terms and conditions of agreement for raising protection wall and providing barbed wires fencing were violated and the plaintiffs/respondents have proved their case by producing reliable evidence and they suffered loss to the extent of Rs. 89,000/-. It is also quite clear from the evidence on record that the defendant/appellant violated the terms and conditions and on account of the same, they are liable to pay a sum of Rs. 89,000/- as damage to the plaintiffs/respondents.

20. On the basis of the assessment of evidence, I come to the conclusion that there is no infirmity in the judgment and decree dated 03.08.1993 passed by the court below.

21. The appeal lacks merit and is liable to be dismissed.

22. Accordingly, the appeal is dismissed.

(B.C. Kandpal, J.)

November 23, 2006
ASWAL